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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Calling Party Pays Service Offering
in the Commercial Mobile Radio Services

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WT Docket No. 97-207

COMMENTS OF NEVADACOM, INC.

Nevadacom, Inc. ("Nevadacom") hereby submits these comments in the above-captioned proceeding in which the Commission is considering what steps it may take to remove any regulatory obstacles to the offering of Calling Party Pays ("CPP") services by Commercial Mobile Radio Service ("CMRS") providers. Nevadacom's comments are limited to the issue of whether the Commission has the authority to require local exchange carriers ("LECS") to provide billing and collection ("B&C") services for CMRS and other telecommunications providers. As shown below, the Commission has ample authority under Title I of the Communications Act to regulate LEC B&C services. Further, the current proceeding is at least the third in approximately the past two years in which the need for LEC B&C has arisen as a critical issue.^{1/} Given the demonstrated need for LEC B&C services by both wireless and wireline carriers, the Commission should reconsider its 1986 decision to deregulate LEC B&C services^{2/} by: (1) initiating a proceeding proposing to reassert Title II jurisdiction over LEC B&C

^{1/} As discussed below, the need for LEC B&C services has arisen in the *Truth-in-Billing* proceeding and in a 1997 petition for rulemaking filed by MCI. See *Truth-in-Billing and Billing Format, Notice of Proposed Rulemaking*, CC Docket No. 98-170 (rel. September 17, 1998) ("*Truth-in-Billing Proceeding*"); MCI Telecommunications Corporation Files Petition for Rulemaking Regarding Local Exchange Company Requirements for Billing and Collection of Nonsubscribed Services, *Public Notice*, RM-9108 (rel. June 25, 1997) ("*MCI Proceeding*").

^{2/} Detariffing of Billing and Collection Services, *Report and Order*, 102 FCC 2d 1150 (Jan. (continued...))

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services; or (2) granting MCI's request that would require LECs to provide B&C services on a nondiscriminatory basis to unaffiliated entities.

Background

Nevadacom provides domestic and international telegram and cablegram services to customers worldwide. Nevadacom's approximately 5300 agents and couriers provide service to every United States and Canadian address. Nevadacom often transmits messages to rural areas and regions affected by natural disasters and emergencies where no other means of communication is available.

Nevadacom provides its services pursuant to FCC authorization and duly filed tariffs.^{3/} As a result, Nevadacom is subject to common carrier regulation pursuant to Title II of the Communications Act of 1934, as amended. Among other obligations as a common carrier, Nevadacom must provide service to all who request it, may not discriminate, and is subject to Section 208 complaint proceedings.

To send a telegram via Nevadacom, customers dial an 800 number to reach a representative who will transcribe the customer's message and have it delivered to the intended recipient via fax, hand delivery, phone, or mail. The charge for the telegram is based on the number of words and the method of delivery.

More than half of Nevadacom's customers choose to bill the cost of service to their local phone bill. Nevadacom can provide this type of billing through its contracts with billing clearinghouses which have B&C agreements with the LECs. Telephone billing is particularly

^{2/} (...continued)
29, 1986) ("*Detariffing Order*").

^{3/} Order and Authorization, File No. ITC-95-620 (rel. January 15, 1996); *see also* Nevadacom's FCC Tariff No. 1.

important considering that many of Nevadacom's customers have phones but not credit cards, thereby making credit card billing impossible. Nevadacom may also bill through debits to bank accounts and, in some cases, through cash payments to agents. Notwithstanding, LEC billing remains the most cost-effective means for billing the generally one or two transactions per year by a customer.

Within the last two years, in response to the growing number of cramming complaints, LECs have begun terminating or modifying their B&C agreements with billing clearinghouses. In some cases, however, the LEC simply refuses to bill for a particular service or type of call record even if the LEC has not received complaints regarding a particular service provider. Further, as they are pressured by the LECs, billing clearinghouses have begun to impose dollar limits on the amount a vendor may charge for individual transactions, regardless of the service. As Nevadacom has explained in both the *Truth-in-Billing* and *MCI Proceeding*,^{4/} these practices threaten the continued viability of Nevadacom and similar service providers who rely on LEC B&C services.

Discussion

In 1986, the Commission detariffed billing and collection services, determining that such services were not common carrier services subject to Title II regulation.^{5/} The Commission did find, however, that billing and collection is "incidental" to the transmission of wire communications and, therefore, is a communications service within the meaning of Section 3(a)

^{4/} See Comments of Nevadacom on *Truth-in-Billing* NPRM (November 13, 1998); Comments of Nevadacom in *MCI Proceeding* (December 4, 1998).

^{5/} See *Detariffing Order*.

of the Communications Act.^{6/} Accordingly, the Commission may invoke ancillary jurisdiction under Title I of the Communications Act over LEC B&C services.^{7/} The Commission has held that “Title I permits us to exercise ancillary jurisdiction over communications services if such regulation is ‘necessary to ensure the achievement of [our] . . . statutory responsibilities.’”^{8/}

As Nevadacom discussed in the *Truth-in-Billing* and *MCI Proceeding*, the Commission should exercise its Title I jurisdiction to prevent LECs from unreasonably terminating or modifying B&C agreements with billing clearinghouses.^{9/} The current LEC practice of terminating B&C agreements or imposing unreasonable conditions on billing clearinghouses threatens the continued viability of many telecommunications carriers, such as Nevadacom, which provide valuable services to the public. Exercise of Title I jurisdiction to require that LECs providing nondiscriminatory B&C services for all telecommunications providers is necessary to achieve at least two of the Commission’s statutory responsibilities: (1) to preserve and advance universal service and to promote “safety of life and property through the use of wire and radio communication;”^{10/} and (2) to eliminate “market entry barriers for entrepreneurs and other small businesses in the provision of . . . telecommunications services and information

^{6/} *Id.* ¶ 36; Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, *Report and Order and Request for Supplemental Comment*, 7 FCC Rcd 3528, n.50 (May 8, 1992).

^{7/} *Detariffing Order*, ¶ 35.

^{8/} Audio Communications, Inc., *Memorandum Opinion and Order*, 8 FCC Rcd 8697, ¶ 23 (Dec. 20, 1993) (citations omitted).

^{9/} See Comments of Nevadacom on *Truth-in-Billing* NPRM at 8-9; Comments of Nevadacom in *MCI Proceeding* at 7-8.

^{10/} 47 U.S.C. §§ 151, 254.

services.”^{11/}

In its 1997 *Petition for Rulemaking*, MCI demonstrated that the unavailability of LEC B&C services threatens the nonsubscribed interexchange services market, which includes collect, 10XXX, third-party, LEC “joint-use” calling card, and 900 service calling.^{12/} In both the *MCI Proceeding* and the *Truth-in-Billing* proceeding, Nevadacom and other commenters have discussed extensively the need for LEC B&C services and the incentive and ability of LECs to discriminate in providing B&C.^{13/}

This proceeding is the third in the past two years in which the LECs’ control over B&C services has been discussed as an impediment to the development of a segment of the telecommunications industry. Given the clear need of telecommunications providers for nondiscriminatory access to LEC B&C services, Nevadacom urges the Commission to either: (1) initiate a proceeding proposing to reassert Title II jurisdiction over LEC B&C services; or (2)

^{11/} 47 U.S.C. § 257.

^{12/} See MCI Petition for Rulemaking, RM-9108 (filed May 19, 1997).

^{13/} See Comments of Nevadacom on *Truth-in-Billing* NPRM at 8-9; Comments of Nevadacom in *MCI Proceeding* at 7-8. See, e.g., Comments of the Coalition to Ensure Responsible Billing on *Truth-in-Billing* NPRM at 5 (“LECs have both the incentive and the ability to discriminate in provision of billing and collection services to the detriment of providers of competing telecommunications services.”); Comments of the Electronic Commerce Association on *Truth-in-Billing* NPRM at 4 (“[T]hird-party billing and collection abuses by LECs has a deleterious impact on competition in the market for telecommunication services. Moreover, the cost of direct billing and collection is prohibitive for independent providers of enhanced and information services.”); Comments of OAN Services, Inc. and IntegreTel, Inc. in *MCI Proceeding* at 8 (“Only a comprehensive rule requiring nondiscriminatory access to billing functions for both nonsubscribed and presubscribed services will begin to address the LECs’ exercise of virtually unfettered control over these functions.”); Comments of Pilgrim in *MCI Proceeding* at 3 (“The Commission should initiate a rule making to ensure that LEC billing and collection services are consistently available to casual service providers, because such services constitute an ‘essential facility.’ As such, LECs should not be permitted to discriminate as to who has access to such facilities.”).

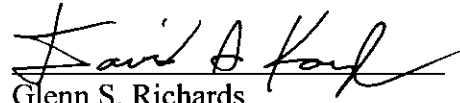
grant MCI's request that would require LECs to provide B&C services on a nondiscriminatory basis to unaffiliated telecommunications carriers.

Conclusion

In light of the foregoing, Nevadacom requests that the Commission take action consistent with the recommendations discussed herein.

Respectfully submitted,

NEVADACOM, INC.

A handwritten signature in dark ink, appearing to read "Glenn S. Richards", is written over a horizontal line.

Glenn S. Richards

David S. Konczal

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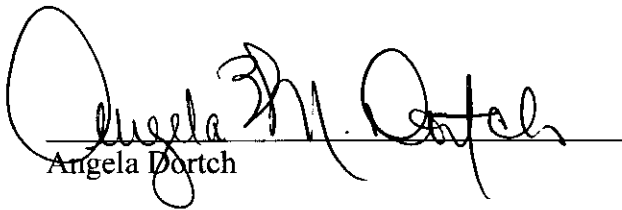
Dated: September 17, 1999

CERTIFICATE OF SERVICE

I, Angela Dortch, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 17th day of September 1999, served a true copy of the foregoing "**Comments**" via hand delivery, upon the following:

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